Avoid a Surprise Wipeout: Don’t Let Costly Mistakes Dampen Your Retirement Plan

MILLER NASH LLP

Anthony Hunt

anthony.hunt@millernash.com

Retirement Plans, Errors & Corrections

- Retirement plans are very complex, making compliance challenging
- Mistakes will happen
- How can we avoid getting wiped out!

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Quick Terminology

- "**Qualified retirement plan**"—a retirement plan that meets the requirements of the Internal Revenue Code (the "Code"), providing the following tax benefits:
  - Participants defer taxation until they take a distribution from Plan;
  - Employers may claim deductions for contributions to Plan;
  - The trust that holds Plan contributions is not taxed;
  - Participants may defer taxation further through certain rollovers;
  - Some employers may claim additional benefits such as tax credits, etc.

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Quick Terminology

- "**WIPEOUT!**" – a mistake that, left uncorrected, could result in the following:
  - jeopardize the Plan's tax-qualification under the Internal Revenue Code,
  - trigger violations under ERISA (and other federal laws),
  - or both!
- Consequences of a **WIPEOUT**!
  - Plan disqualification may result in catastrophic consequences to employer and participants
    - Participants must include post-disqualification certain contributions in income
    - Earnings on plan assets become taxable to the Plan's trust
    - Employers do not get to claim deduction in year contributions made (must wait to claim until vesting occurs)
    - Potential loss of rollover treatment for participants
    - Penalties, fees, sanctions

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Common Mistakes

- Failure to provide eligible employees the opportunity to make deferrals or participate

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Common Mistakes

- Failure to timely deposit elective contributions to participant accounts

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Common Mistakes

- Failure to apply the correct definition of “compensation” as defined in the Plan

Mistakes in Your Retirement Plan?

- What should you do if you find a mistake?

CORRECT IT!

How to Correct?

- May require correction with both IRS and Department of Labor (DOL)
- IRS correction program
  - Employee Plans Compliance Resolution System (EPCRS)
- DOL correction programs
  - Voluntary Fiduciary Correction Program (VFCP)
  - Delinquent Filer Voluntary Compliance Program (DFVCP)

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Correction with IRS

- EPCRS has three correction programs that require IRS supervision and approval:
  - Voluntary Correction Program (VCP)
  - Audit Closing Agreement Program (Audit CAP)
  - Self-Correction Program (“self-correction”)
- VCP and Audit CAP require IRS supervision and approval
  - Costly and time-consuming
- Self-correction requires no IRS submission or approval
- Congress recently expanded self-correction opportunities under EPCRS
  - SECURE 2.0 Act of 2022
  - Some expanded self-correction opportunities available now
    - IRS guidance expected – more self-correction opportunities to come!
- Full correction resolves qualification issues under the Code!!!

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Correction with DOL

- DOL has two correction programs
  - Voluntary Fiduciary Correction Program (VFCP)
    - Employers voluntarily disclose and correct possible violations of ERISA
      - Engaging in prohibited transactions
      - Charging or collecting improper plan expenses
      - Making late deposits of participant contributions
  - Delinquent Filer Voluntary Compliance Program (DFVCP)
    - Employers disclose and correct failures to comply with ERISA disclosure requirements
      - Annual reporting (Form 5500, etc.)
    - Full correction avoids higher civil penalties

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Correction Considerations

- Gather your team—before mistakes occur!
  - Payroll staff
  - Third-party administrator (TPA)
  - Legal counsel
  - Recordkeeper and other service providers
- Get help!
  - Corrections are complex
  - Even sophisticated employers will need assistance
    - "Simple" errors are not always simple
    - Correction programs are rigorous and often convoluted
- Disclose the mistake early!
  - Correct before IRS or DOL discovery
    - Self-correction is not always available once discovered by IRS/DOL

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Takeaways

- Mistakes will inevitably happen with your retirement plan
- Get your team in place early—before mistakes occur
- Correct any and all mistakes
- Get help to avoid a WIPEOUT!

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